

Assembly Bill No. 2405

CHAPTER 639

An act to amend Sections 674, 699.510, 699.520, 699.540, 699.545, 700.010, and 700.160 of, and to add Section 680.135 to, the Code of Civil Procedure, relating to judgments.

[Approved by Governor September 24, 2000. Filed
with Secretary of State September 26, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2405, Maddox. Abstract of judgment or decree: contents.

Existing law requires an abstract of a judgment or decree requiring the payment of money to be certified by the clerk of the court and to contain certain information, as specified. Existing law also provides that after entry of a money judgment, the clerk of the court shall issue a writ of execution upon application by the judgment creditor and the writ shall be directed to the levying officer in the county where the levy is to be made and to any registered process server, as specified.

This bill would authorize the judgment creditor to file an affidavit of identity, as defined, under penalty of perjury, that states the name of the judgment debtor listed on the judgment, and the additional name or names by which the judgment debtor is known. The bill would require the court to approve the affidavit of identity prior to the clerk of the court certifying an abstract of judgment or issuing a writ of execution containing any additional name or names by which the judgment debtor is known that are not listed on the judgment. The bill would authorize the court to determine, without a hearing or notice, whether the affidavit of identity states sufficient facts upon which the judgment creditor has identified the additional names of the judgment debtor and, if so, would require the court to authorize the certification of the abstract of judgment or issuance of the abstract of judgment with the additional name or names. The bill would provide, in any case in which the writ of execution lists any name other than the name listed on the judgment, the levying officer to wait 15 days after service of the notice of levy prior to enforcing the levy. The bill would provide remedies for 3rd parties whose property was erroneously subject to an enforcement of judgment proceeding based upon the affidavit of identity, as specified. The bill would also make related changes and impose related requirements.

Under existing law, a deposit account or safe-deposit box standing in the name of a person other than the judgment debtor, either alone or together with other 3rd persons, is not subject to levy unless

authorized by court order. Existing law provides exceptions to the above for specified persons.

This bill would additionally provide an exception for the additional name of a judgment debtor listed on a writ of execution pursuant to an affidavit of identity.

This bill would incorporate additional changes in Section 699.510 of the Code of Civil Procedure proposed by AB 1358, to be operative if this bill and AB 1358 are enacted and become effective on or before January 1, 2001, and this bill is enacted last.

Because this bill would impose additional duties on local officials, and expand the crime of perjury, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 674 of the Code of Civil Procedure is amended to read:

674. (a) Except as otherwise provided in Section 4506 of the Family Code, an abstract of a judgment or decree requiring the payment of money shall be certified by the clerk of the court where the judgment or decree was entered and shall contain all of the following:

(1) The title of the court where the judgment or decree is entered and cause and number of the action.

(2) The date of entry of the judgment or decree and of any renewals of the judgment or decree and where entered in the records of the court.

(3) The name and last known address of the judgment debtor and the address at which the summons was either personally served or mailed to the judgment debtor or the judgment debtor's attorney of record.

(4) The name and address of the judgment creditor.

(5) The amount of the judgment or decree as entered or as last renewed.

(6) The social security number and driver's license number of the judgment debtor if they are known to the judgment creditor; and, if either or both of those numbers are not known to the judgment creditor, that fact shall be indicated on the abstract of judgment.

(7) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends.

(8) The date of issuance of the abstract.

(b) An abstract of judgment, recorded after January 1, 1979, that does not list the social security number and driver's license number of the judgment debtor, or either of them, as required by subdivision (a) or by Section 4506 of the Family Code, may be amended by the recording of a document entitled "Amendment to Abstract of Judgment." The Amendment to Abstract of Judgment shall contain all of the information required by this section or by Section 4506 of the Family Code, shall list both the social security number and driver's license number if both of those numbers were known at the date of recordation of the original abstract of judgment, or one of them, if only one was known, and shall set forth the date of recording and the book and page location in the records of the county recorder of the original abstract of judgment.

A recorded Amendment to Abstract of Judgment shall have priority as of the date of recordation of the original abstract of judgment, except as to any purchaser, encumbrancer, or lessee who obtained their interest after the recordation of the original abstract of judgment but prior to the recordation of the Amendment to Abstract of Judgment without actual notice of the original abstract of judgment. The purchaser, encumbrancer, or lessee without actual notice may assert as a defense against enforcement of the abstract of judgment the failure to comply with this section or Section 4506 of the Family Code regarding the contents of the original abstract of judgment notwithstanding the subsequent recordation of an Amendment to Abstract of Judgment. With respect to an abstract of judgment recorded between January 1, 1979, and July 10, 1985, the defense against enforcement for failure to comply with this section or Section 4506 of the Family Code may not be asserted by the holder of another abstract of judgment or involuntary lien, recorded without actual notice of the prior abstract, unless refusal to allow the defense would result in prejudice and substantial injury as used in Section 475. The recordation of an Amendment to Abstract of Judgment does not extend or otherwise alter the computation of time as provided in Section 697.310.

(c) (1) The abstract of judgment shall be certified in the name of the judgment debtor as listed on the judgment and may also include the additional name or names by which the judgment debtor is known as set forth in the affidavit of identity, as defined in Section 680.135, filed by the judgment creditor with the application for issuance of the abstract of judgment. Prior to the clerk of court



certifying an abstract of judgment containing any additional name or names by which the judgment debtor is known that are not listed on the judgment, the court shall approve the affidavit of identity. If the court determines, without a hearing or a notice, that the affidavit of identity states sufficient facts upon which the judgment creditor has identified the additional names of the judgment debtor, the court shall authorize the certification of the abstract of judgment with the additional name or names.

(2) The remedies provided in Section 697.410 apply to a recorded abstract of a money judgment based upon an affidavit of identity that appears to create a judgment lien on real property of a person who is not the judgment debtor.

SEC. 2. Section 680.135 is added to the Code of Civil Procedure, to read:

680.135. “Affidavit of Identity” means an affidavit or declaration executed by a judgment creditor, under penalty of perjury, that is filed with the clerk of the court in which the judgment is entered at the time the judgment creditor files for a writ of execution or an abstract of judgment. The affidavit of identity shall set forth the case name and number, the name of the judgment debtor stated in the judgment, the additional name or names by which the judgment debtor is known, and the facts upon which the judgment creditor has relied in obtaining the judgment debtor’s additional name or names. The affidavit of identity shall not include the name or names of persons, including any corporations, partnerships, or any legal entities not separately named in the judgment in which the judgment debtor is a partner, shareholder, or member, other than the judgment debtor.

SEC. 3. Section 699.510 of the Code of Civil Procedure is amended to read:

699.510. (a) Subject to subdivision (b), after entry of a money judgment, a writ of execution shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the levy is to be made and to any registered process server. A separate writ shall be issued for each county where a levy is to be made. Writs may be issued successively until the money judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned.

(b) If the judgment creditor seeks a writ of execution to enforce a judgment made, entered, or enforceable pursuant to the Family Code, in addition to the requirements of this article, the judgment creditor shall satisfy the requirements of any applicable provisions of Chapter 7 (commencing with Section 5100) of Part 5 of Division 9 of the Family Code and Sections 290, 291, 2026, and 3556 of the Family Code.



(c) (1) The writ of execution shall be issued in the name of the judgment debtor as listed on the judgment and may include the additional name or names by which the judgment debtor is known as set forth in the affidavit of identity, as defined in Section 680.135, filed by the judgment creditor with the application for issuance of the writ of execution. Prior to the clerk of court issuing a writ of execution containing any additional name or names by which the judgment debtor is known that are not listed on the judgment, the court shall approve the affidavit of identity. If the court determines, without a hearing or a notice, that the affidavit of identity states sufficient facts upon which the judgment creditor has identified the additional names of the judgment debtor, the court shall authorize the issuance of the writ of execution with the additional name or names.

(2) In any case where the writ of execution lists any name other than that listed on the judgment, the person in possession or control of the levied property, if other than the judgment debtor, shall not pay to the levying officer the amount or deliver the property being levied upon until being notified to do so by the levying officer. The levying officer may not require the person, if other than the judgment debtor, in possession or control of the levied property to pay the amount or deliver the property levied upon until the expiration of 15 days after service of notice of levy.

(3) If a person who is not the judgment debtor has property erroneously subject to an enforcement of judgment proceeding based upon an affidavit of identity, the person shall be entitled to the recovery of reasonable attorneys' fees and costs from the judgment creditor incurred in releasing the person's property from a writ of execution, in addition to any other damages or penalties to which an aggrieved person may be entitled to by law, including the provisions of Division 4 (commencing with Section 720.010).

SEC. 3.1. Section 699.510 of the Code of Civil Procedure is amended to read:

699.510. (a) Subject to subdivision (b), after entry of a money judgment, a writ of execution shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the levy is to be made and to any registered process server. A separate writ shall be issued for each county where a levy is to be made. Writs may be issued successively until the money judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned.

(b) If the judgment creditor seeks a writ of execution to enforce a judgment made, entered, or enforceable pursuant to the Family Code, in addition to the requirements of this article, the judgment creditor shall satisfy the requirements of any applicable provisions of the Family Code.



(c) (1) The writ of execution shall be issued in the name of the judgment debtor as listed on the judgment and may include the additional name or names by which the judgment debtor is known as set forth in the affidavit of identity, as defined in Section 680.135, filed by the judgment creditor with the application for issuance of the writ of execution. Prior to the clerk of court issuing a writ of execution containing any additional name or names by which the judgment debtor is known that are not listed on the judgment, the court shall approve the affidavit of identity. If the court determines, without a hearing or a notice, that the affidavit of identity states sufficient facts upon which the judgment creditor has identified the additional names of the judgment debtor, the court shall authorize the issuance of the writ of execution with the additional name or names.

(2) In any case where the writ of execution lists any name other than that listed on the judgment, the person in possession or control of the levied property, if other than the judgment debtor, shall not pay to the levying officer the amount or deliver the property being levied upon until being notified to do so by the levying officer. The levying officer may not require the person, if other than the judgment debtor, in possession or control of the levied property to pay the amount or deliver the property levied upon until the expiration of 15 days after service of notice of levy.

(3) If a person who is not the judgment debtor has property erroneously subject to an enforcement of judgment proceeding based upon an affidavit of identity, the person shall be entitled to the recovery of reasonable attorneys' fees and costs from the judgment creditor incurred in releasing the person's property from a writ of execution, in addition to any other damages or penalties to which an aggrieved person may be entitled to by law, including the provisions of Division 4 (commencing with Section 720.010).

SEC. 4. Section 699.520 of the Code of Civil Procedure is amended to read:

699.520. The writ of execution shall require the levying officer to whom it is directed to enforce the money judgment and shall include the following information:

- (a) The date of issuance of the writ.
- (b) The title of the court where the judgment is entered and the cause and number of the action.
- (c) The name and address of the judgment creditor and the name and last known address of the judgment debtor.
- (d) The date of the entry of the judgment and of any subsequent renewals and where entered in the records of the court.
- (e) The total amount of the money judgment as entered or renewed, together with costs thereafter added to the judgment pursuant to Section 685.090 and the accrued interest on the judgment from the date of entry or renewal of the judgment to the date of



issuance of the writ, reduced by any partial satisfactions and by any amounts no longer enforceable.

(f) The amount required to satisfy the money judgment on the date the writ is issued.

(g) The amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued.

(h) Whether any person has requested notice of sale under the judgment and, if so, the name and mailing address of such person.

(i) The sum of the fees and costs added to the judgment pursuant to Section 6103.5 or 68511.3 of the Government Code and which is in addition to the amount owing to the judgment creditor on the judgment.

(j) Whether the writ of execution includes any additional names of the judgment debtor pursuant to an affidavit of identity, as defined in Section 680.135.

SEC. 5. Section 699.540 of the Code of Civil Procedure is amended to read:

699.540. The notice of levy required by Article 4 (commencing with Section 700.010) shall inform the person notified of all of the following:

(a) The capacity in which the person is notified.

(b) The property that is levied upon.

(c) The person's rights under the levy, including the right to claim an exemption pursuant to Chapter 4 (commencing with Section 703.010) and the right to make a third-party claim pursuant to Division 4 (commencing with Section 720.010).

(d) The person's duties under the levy.

(e) All names listed in the writ of execution pursuant to an affidavit of identity, as defined in Section 680.135, if any.

SEC. 6. Section 699.545 of the Code of Civil Procedure is amended to read:

699.545. A copy of the original notice of levy which has been served upon a third party holding the property sought to be levied upon and the affidavit of identity, as defined in Section 680.135, if any, if served upon the judgment debtor or any other party, shall suffice as the notice of levy to that person.

SEC. 7. Section 700.010 of the Code of Civil Procedure is amended to read:

700.010. (a) At the time of levy pursuant to this article or promptly thereafter, the levying officer shall serve a copy of the following on the judgment debtor:

(1) The writ of execution.

(2) A notice of levy.

(3) If the judgment debtor is a natural person, a copy of the form listing exemptions prepared by the Judicial Council pursuant to subdivision (c) of Section 681.030.

(4) Any affidavit of identity, as defined in Section 680.135, for names of the debtor listed on the writ of execution.

(b) Service under this section shall be made personally or by mail.

SEC. 8. Section 700.160 of the Code of Civil Procedure is amended to read:

700.160. (a) Except as provided in subdivision (b), a deposit account or safe-deposit box standing in the name of a person other than the judgment debtor, either alone or together with other third persons, is not subject to levy under Section 700.140 or 700.150 unless the levy is authorized by court order. The levying officer shall serve a copy of the court order on the third person at the time the copy of the writ of execution and the notice of levy are served on the third person.

(b) A court order is not required as a prerequisite to levy on a deposit account or safe-deposit box standing in the name of any of the following:

(1) The judgment debtor, whether alone or together with third persons.

(2) The judgment debtor's spouse, whether alone or together with other third persons. An affidavit showing that the person in whose name the account stands is the judgment debtor's spouse shall be delivered to the financial institution at the time of levy.

(3) A fictitious business name if an unexpired fictitious business name statement filed pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code lists as the persons doing business under the fictitious business name either (A) the judgment debtor or (B) the judgment debtor's spouse or (C) the judgment debtor and the judgment debtor's spouse, but does not list any other person. A copy of a fictitious business name statement, certified as provided in Section 17926 of the Business and Professions Code, that satisfies these requirements shall be delivered to the financial institution at the time of levy, and if a person other than the defendant is listed in the statement, an affidavit showing that the other person is the judgment debtor's spouse shall also be delivered to the financial institution at the time of levy.

(4) The additional name of a judgment debtor listed on the writ of execution pursuant to an affidavit of identity as provided by Section 680.135, whether alone or together with third persons.

(c) In any case where a deposit account in the name of a person other than the judgment debtor, whether alone or together with the judgment debtor, is levied upon, the financial institution shall not pay to the levying officer the amount levied upon until being notified to do so by the levying officer. The levying officer may not require the financial institution to pay the amount levied upon until the expiration of 15 days after service of notice of levy on the third person.

SEC. 9. Section 3.1 of this bill incorporates amendments to Section 699.510 of the Code of Civil Procedure proposed by both this

bill and AB 1358. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 699.510 of the Code of Civil Procedure, and (3) this bill is enacted after AB 1358, in which case Section 3 of this bill shall not become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

O

